

Message Text

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 /031 W
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P 291246Z MAY 74

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC PRIORITY 6654

C O N F I D E N T I A L SECTION 1 OF 2 BUENOS AIRES 3894

STADIS////////////////////////////////////

EXDIS

E.O. 11652: GDS

TAGS: BBAK, EIND, AR

SUBJECT: DELTEC CASE

REF STATE 103054

1. FOLLOWING INFORMATION PROVIDED IN RESPONSE TO SPECIFIC QUESTIONS RAISED PARA 2 REFTEL AND IS BASED ON INFORMATION ALREADY IN EMBASSY'S FILES AND OUR PREVIOUS CONVERSATIONS WITH DELTEC LOCAL LEGAL COUNSEL, VISITING DELTEC OFFICER (MAX STOLPER) AND OTHER LOCAL ATTORNEYS, ETC WHO FAMILIAR WITH CASE. EMBASSY HAS NOT RAISED DELTEC PROBLEMS DIRECTLY IN CONVERSATIONS WITH GOA OFFICIALS SINCE RETURN OF PERONIST GOVERNMENT BECAUSE OF OUR UNCERTAINTY RE EVENTUAL USG ROLE IN CASE. EMBASSY WILL CONTINUE DISCREET ATTEMPTS TO OBTAIN MORE COMPLETE INFORMATION AND REPORT RESULTS.

A) SWIFT ALLEGEDLY SOLD MEAT TO DELTEC SUBSIDIARIES ABROAD AT LESS THAN COST, REPAID MAJOR DEBTS TO DELTEC PRIOR TO THEIR DUE DATE AND SHORTLY BEFORE IT STOPPED PAYMENTS TO LOCAL CREDITORS, AND ASSUMED LARGE LIABILITIES THROUGH PURCHASE OF OTHER INEFFICIENT MEAT PACKING PLANTS IN ARGENTINA AND THROUGH LOANS TO OTHER DELTEC SUBSIDIARIES IN ARGENTINA. THESE ALLEGATIONS, ALONG WITH SUPPORTING DOCUMENTATION, WERE CONTAINED IN REPORT TO COMMERCIAL COURT BY NATIONAL MEAT BOARD. THIS REPORT WAS PLACED IN COURT RECORD AND REFERRED TO IN SUBSEQUENT COURT CONFIDENTIAL

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DECISIONS, BUT APPARENTLY HAS NEVER BEEN MADE PUBLIC. THESE

ALLEGATIONS WERE NOT FULLY AIRED IN COURT PROCEEDINGS, BUT EMBASSY WAS INFORMED AT ONE POINT THAT SWIFT ATTORNEY DID SEE MEAT BOARD REPORT AT COURT AND FILED ANSWERS TO SOME ISSUES. DELTEC MAINTAINS THESE ALLEGATIONS HAVE NOT BEEN PROVEN, WHILE ALL THREE COURTS (COMMERCIAL, APPEALS AND SUPREME) WHICH RULED IN CASE INDICATED THEY HAD SEEN ENOUGH EVIDENCE TO SUBSTANTIATE THEM.

B) ALL INFORMATION AVAILABLE TO EMBASSY INDICATES FORMAL JUDICIAL REQUIREMENTS UNDER ARGENTINE LAW WERE OBSERVED THROUGHOUT DELTEC CASE. ACTIONS BY COMMERCIAL COURT JUDGE LOZADA, ALTHOUGH APPARENTLY ARBITRARY, LACKING IN IMPARTIALITY AND REFLECTING POLITICAL AND SOCIAL, AS WELL AS ECONOMIC FACTORS, NOT SEEN BY MOST LOCAL ATTORNEYS AS PROVIDING GROUNDS FOR CLAIM OF DENIAL OF JUSTICE WITHIN ARGENTINA. WHILE ARBITRARY IN NATURE, JUDGE'S REFUSAL TO ACCEPT REPAYMENT SCHEDULE PROPOSED BY SWIFT AND APPROVED BY LARGE MAJORITY OF CREDITORS, AND HIS CONSEQUENT DECLARATION OF SWIFT'S BANKRUPTCY AS BEING IN THE "GENERAL INTEREST," WERE CONFIRMED BY APPEALS COURT AS BEING WITHIN HIS DISCRETION UNDER ARGENTINE COMMERCIAL LAW. EMBASSY HAS NO BASIS FOR BELIEVING THAT DELTEC DID NOT ATTEMPT STRONGEST DEFENSE POSSIBLE IN EARLY COURT ACTIONS. SOME ATTORNEYS HERE MAINTAIN, HOWEVER, THAT DELTEC MADE INITIAL TACTICAL MISTAKE IN REQUESTING A COURT APPROVED INSOLVENCY, OR "CONVOCATORIA," WHICH AUTOMATICALLY LEFT IT OPEN TO POSSIBILITY OF COURT-DECLARED BANKRUPTCY. THEY POINT TO SOMEWHAT ANALOGOUS CASE ALSO INVOLVING FOREIGN-OWNED MEAT PACKING PLANT IN WHICH CREDITORS WERE PAID OFF AND FOREIGN SHAREHOLDERS LIQUIDATED THEIR INTERESTS WITHOUT TAKING CASE INTO COURT SYSTEM. WE UNDERSTAND SIMILAR ROUTE WAS SUGGESTED TO DELTEC AT ONE TIME, BUT THEY CHOSE TO GO ROUTE OF "CONVOCATORIA." FOLLOWING COMMERCIAL COURT'S BANKRUPTCY DECISION, DELTEC PARTED COMPANY WITH LAW FIRM WHICH HAD DEFENDED IT IN CASE. EMBASSY HAS NO INDICATION THAT DELTEC ATTEMPTED TO OBTAIN DIPLOMATIC PROTECTION PRIOR TO ORIGINAL COURT DECISION, BUT AS PROSPECTS FOR FAVORABLE SETTLEMENT WITHIN JUDICIAL SYSTEM DIMINISHED, DELTEC HAS INCREASED PRESSURE FOR SUCH PROTECTION. DELTEC PRESIDENT DAUPHINOT HAS, OF COURSE, SET FORTH COMPANY'S POSITION IN CASE IN EXTENSIVE SERIES OF PERSONAL LETTERS TO INFLUENTIAL INTERNATIONAL BUSINESS LEADERS, SINCE AT LEAST LATE 1971.

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C) DETENTION ORDER REPORTEDLY ISSUED EARLIER THIS YEAR AGAINST US CITIZENS DAUPHINOT AND BEATTY, AS WELL AS OTHER FORMER SWIFT-DELTEC OFFICIALS, RESULTS FROM CRIMINAL CHARGE OF FRAUD INITIATED IN SEPTEMBER 1972 BY CREDITOR OF SWIFT. CRIMINAL CASE, BASED ON ALLEGATIONS SIMILAR TO THOSE MADE BY COMMERCIAL COURT IN BANKRUPTCY DECISION (SEE PARA 1 ABOVE), BEING HANDLED COMPLETELY SEPARATE FROM BANKRUPTCY

CASE. CRIMINAL CASE STILL IN INVESTIGATIVE STAGE,
AND UNDER ARGENTINE ALW, COURT EXAMINING CHARGES REQUIRED
TO OBTAIN STATEMENTS IN PERSON FROM INDIVIDUALS INVOLVED. WE
UNDERSTAND COURT HAS REQUESTED 6 INDIVIDUALS, INCLUDING DAUPHINOT
AND BEATTY, TO APPEAR TO MAKE STATEMENTS. NONE OF THESE
HAVE APPEARED, AND COURT, THEREFORE, UNDERSTOOD TO HAVE
ISSUED DETENTION ORDER. NOT KNOWN IF THIS ORDER DISTRIBUTED
OUTSIDE ARGENTINA, AND IF SO, WHETHER IT WOULD BE IMPLEMENTED
BY NON-ARGENTINE AUTHORITIES. ONCE IN ARGENTINA NAMED INDIVIDUALS
WOULD PROBABLY NOT BE PERMITTED TO LEAVE UNTIL CASE CLOSED.
DETENTION ORDER MAY BE PRELUDE TO EXTRADITION REQUEST, BUT
THIS BY NO MEANS CERTAIN AS IT AT DISCRETION OF EXAMINING COURT.
SEE ALSO BA 8271, 13 NOV 73, BA 8788, 3 DEC 73 AND
SUBSEQUENT MESSAGES.

D) ORIGINAL RULINGS BY COMMERCIAL COURT JUDGE LOZADA DECLARING
SWIFT BANKRUPT AND EXTENDING RESPONSIBILITY FOR DEBTS TO ALL
DELTEC HOLDINGS IN ARGENTINA, AND THUS PIERCING CORPORATE VEIL,
WERE MADE IN NOVEMBER 1971 DURING LANUSSE GOVERNMENT. APPEALS
COURT RULING CONFIRMING BANKRUPTCY BUT REJECTING EXTENSION
TO OTHER HOLDINGS ISSUED JUNE 1972, ALSO UNDER LANUSSE
GOVERNMENT. FINAL DECISION BY SUPREME COURT, WHICH RECONFIRMED

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 /031 W
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P 291246Z MAY 74K
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC PRIORITY 6655

C O N F I D E N T I A L SECTION 2 OF 2 BUENOS AIRES 3894

STADIS////////////////////////////////////

EXDIS

BRANKRUPTCY RULING, REINSTATED EXTENSION OF RESPONSIBILITY TO
OTHER LOCAL HOLDINGS, AND EXTENDED THIS RESPONSIBILITY TO PARENT
COMPANIES MADE 4 SEP 73 UNDER PERONIST GOVERNMENT. LOZADA,
WHO THEN QUICKLY DECLARED ALL COMPANIES BANKRUPT, HAS NOW

RESIGNED JUDICIARY AFTER REFUSING SEAT ON APPEALS COURT WHICH HAD PREVIOUSLY CENSURED HIM. IT, THEREFORE, APPEARS HIGHLY UNLIKELY THAT THESE THREE RULINGS WERE INFLUENCED BY A SPECIFIC POLITICAL GROUP OR PRIVATE INDIVIDUAL OR GROUP INTERESTED IN ACQUIRING DELTEC ASSETS. THIS IN NO WAY RULES OUT POSSIBILITY THAT SOME MEMBERS OF PRESENT GOVERNMENT MAY HAVE NOW DEVELOPED SUCH INTEREST. STOLPER SPECIFICALLY SUGGESTED THIS TO EMBASSY IN LATE OCTOBER 1973. THIS INTEREST ALMOST CERTAINLY LIMITED TO SUGAR MILL SINCE SWIFT PLANT GENERALLY CONSIDERED TO BE UNECONOMICAL AND BURDEN TO GOA, WHICH CURRENTLY ADMINISTERING IT. EVEN IN CASE OF SUGAR MILL, PROFITS BASED IN LARGE PART ON CURRENT FAVORABLE INTERNATIONAL PRICES FOR SUGAR.

E) IT IS OUR UNDERSTANDING THAT ANY ASSETS NOW UNDER COURT ORDERED BANKRUPTCY WHICH MAY REMAIN AFTER SETTLEMENT OF CLAIMS OF SWIFT CREDITORS WOULD REVERT TO ORIGINAL OWNERS, I.E., DELTEC. CURRENT LEVEL OF CLAIMS BY SWIFT CREDITORS NOT CLEAR, HOWEVER. DELTEC REPORTS SWIFT'S LOCALLY OWNED PESO DEBT EQUIVALENT TO US \$6.5 MILLION. WE UNDERSTAND TOTAL DEBT IN 1971 WAS ABOUT US \$14 MILLION. WITH ACCUMULATED INTEREST AND COURT COSTS, DEBT MAY NOW APPROACH US \$25-30 MILLION AND CONTINUES TO INCREASE. THIS IS ROUGHLY EQUAL TO VALUE OF SUGAR MILL.
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2. I HAVE KNOWN CLARENCE DAUPHINOT FOR MANY YEARS AND CONSIDER HIM TO BE A COMPLICATED, CONTROVERSIAL, AND AT TIMES, BRILLIANT EXECUTIVE. AT THE SAME TIME, HE CAN BE VINDICTIVE AND IS CAPABLE OF USING ANY MEANS AVAILABLE TO HIM TO RESOLVE A PROBLEM. THEREFORE, IN ANY DEALINGS WITH HIM, HE MUST BE TOLD EXACTLY WHAT CAN OR CANNOT BE DONE TO ASSIST HIM.

3. APPRECIATE AMBASSADOR BOWDLER HAVING RELAYED MY MESSAGE TO JOHN CONNALLY AND CONSIDER CONALLY'S DECISION NOT TO COME TO BUENOS AIRES UNDER PRESENT CIRCUMSTANCES A WISE ONE. DID CONNALLY REPLY TO MY OFFER TO MEET HIM IN WASHINGTON NEXT WEEK? THAT OFFER STILL OPEN.
HILL

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